

EXHIBIT B

Washington, DC

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION,) MDL No. 1456
_____) Civil Action No
THIS DOCUMENT RELATES TO:) 01-12257-PBS
_____) Judge Patti B.
United States of America,) Saris
ex rel. Ven-A-Care of the) Mag. Judge
Florida Keys, Inc., v.) Marianne Bowler
Abbott Laboratories Inc.)
Civil Action No.)
06-11337-PBS)
-----X

Videotaped Deposition of CYNTHIA B.
SENSIBAUGH, a witness herein, at the offices of
Jones Day, 51 Louisiana Avenue, N.W., Washington,
D.C. commencing at 9:11 a.m. on Friday, March 7,

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Washington, DC

<p style="text-align: right;">Page 74</p> <p>1 MR. GOBENA: Or, Tina, you will have it</p> <p>2 in front of you there.</p> <p>3 MS. TABACCHI: I have it.</p> <p>4 MR. GOBENA: And we'll give it to the</p> <p>5 witness.</p> <p>6 (Exhibit Sensibaugh 006 was marked</p> <p>7 for identification.)</p> <p>8 BY MR. GOBENA:</p> <p>9 Q. This is a document that we went over</p> <p>10 during your 30(b)(1) deposition, Ms. Sensibaugh.</p> <p>11 It's a February 10 interoffice correspondence from</p> <p>12 you to Don Buell, B-u-e-l-l, Michael Heggie, Chris</p> <p>13 Lockett and Rich Masterson. And it's regarding</p> <p>14 the President's budget proposal on Medicare</p> <p>15 reimbursement of outpatient drugs.</p> <p>16 And you wrote, "As you know, the</p> <p>17 President included a provision in his fiscal year</p> <p>18 1998 budget proposal that would base the Medicare</p> <p>19 reimbursement for outpatient drugs on acquisition</p> <p>20 cost rather than AWP," which is something you just</p> <p>21 testified to having knowledge about.</p> <p>22 Abbott opposed the President's 1998</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. GOBENA:</p> <p>2 Q. Mr. Landside testified that Abbott's</p> <p>3 position was that it was opposed to a shift from</p> <p>4 an AWP-based system to an acquisition cost system.</p> <p>5 Are you saying that Mr. Landside was incorrect</p> <p>6 when he stated that in his testimony?</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Yes, I'm not aware of any</p> <p>9 public position Abbott took on that.</p> <p>10 BY MR. GOBENA:</p> <p>11 Q. But was Mr. Landside incorrect that</p> <p>12 there was at least an internal position that</p> <p>13 Abbott was opposed to a shift from an AWP-based</p> <p>14 reimbursement system under Medicare Part B to an</p> <p>15 acquisition cost-based system?</p> <p>16 MS. TABACCHI: Object to the form.</p> <p>17 Beyond the scope.</p> <p>18 THE WITNESS: I'm not prepared to</p> <p>19 testify on -- correct or incorrect on that.</p> <p>20 BY MR. GOBENA:</p> <p>21 Q. In the next sentence of your memo you</p> <p>22 say, "An industry meeting to discuss strategy with</p>
<p style="text-align: right;">Page 75</p> <p>1 budget proposal shifting Medicare drug</p> <p>2 reimbursement from AWP to acquisition cost; isn't</p> <p>3 that correct?</p> <p>4 MS. TABACCHI: Object to the form.</p> <p>5 THE WITNESS: Abbott didn't take a</p> <p>6 position on the acquisition cost shift.</p> <p>7 BY MR. GOBENA:</p> <p>8 Q. I want to read some testimony to you</p> <p>9 from Mr. Landside -- from his deposition, and you</p> <p>10 reviewed his transcript; isn't that correct?</p> <p>11 A. That is correct.</p> <p>12 Q. I asked him a question -- this is on</p> <p>13 page 200 of the transcript, and I said -- I asked</p> <p>14 him, "And at least as of June 1997, Abbott opposed</p> <p>15 the President's budget proposal that would have</p> <p>16 switched the reimbursement of drugs from AWP to</p> <p>17 acquisition costs; isn't that correct?"</p> <p>18 Ms. Tabacchi objected to the form.</p> <p>19 Mr. Landside testified, "Looking at</p> <p>20 this memo, I would have to say that that was the</p> <p>21 position."</p> <p>22 MS. TABACCHI: Object.</p>	<p style="text-align: right;">Page 77</p> <p>1 regard to this issue has been tentatively</p> <p>2 scheduled for Thursday, February 20."</p> <p>3 I believe you testified last time that</p> <p>4 you can't recall whether that meeting actually</p> <p>5 happened. Is my recollection correct?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: That is correct that I do</p> <p>8 not know that that meeting actually occurred.</p> <p>9 BY MR. GOBENA:</p> <p>10 Q. Well, this memo suggests that you were</p> <p>11 authorized to have meetings with other members of</p> <p>12 the pharmaceutical industry about this proposed</p> <p>13 change from an AWP-based system to an acquisition</p> <p>14 cost-based system in 1997; isn't that correct?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 Beyond the scope.</p> <p>17 THE WITNESS: Well, when I look at this</p> <p>18 memo, it seems to be reporting that a meeting will</p> <p>19 occur, but it doesn't say anything about</p> <p>20 attendance or who -- whether someone will attend.</p> <p>21 BY MR. GOBENA:</p> <p>22 Q. You go on to say, "We would like to get</p>

20 (Pages 74 to 77)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Washington, DC

<p style="text-align: right;">Page 82</p> <p>1 documents say, yes.</p> <p>2 BY MR. GOBENA:</p> <p>3 Q. And Ms. Tobiason, in her memorandum,</p> <p>4 raised reservations about Medicare reimbursing for</p> <p>5 drugs at AWP minus 15 percent; isn't that correct?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 Beyond the scope of the notice.</p> <p>8 THE WITNESS: I would say her memo does</p> <p>9 go through issues that she raised -- a summary as</p> <p>10 well as issues that she raised with the rule, yes.</p> <p>11 BY MR. GOBENA:</p> <p>12 Q. And Mr. Robertson, in his June 14, '91,</p> <p>13 memo, which you have there as one of the exhibits,</p> <p>14 stated that, you know, shifting to an AWP minus</p> <p>15 15 percent reimbursement structure in the rules</p> <p>16 was not good for -- had significant implications</p> <p>17 for Abbott's business; isn't that correct?</p> <p>18 MS. TABACCHI: Object to the form.</p> <p>19 Beyond the scope of the notice.</p> <p>20 THE WITNESS: Yes, he does say that in</p> <p>21 his memo.</p> <p>22 BY MR. GOBENA:</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. TABACCHI: Object to the form.</p> <p>2 Beyond the scope.</p> <p>3 THE WITNESS: Well, you lumped them all</p> <p>4 together, but, you know, as we discussed, Abbott</p> <p>5 had not taken a position on those particular</p> <p>6 issues.</p> <p>7 MR. GOBENA: I will try and cut through</p> <p>8 some exhibits here to go faster. Let's have this</p> <p>9 exhibit marked as Sensibaugh 30(b)(6) Exhibit 7.</p> <p>10 (Exhibit Sensibaugh 007 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. GOBENA:</p> <p>13 Q. What I am going to do is I am not going</p> <p>14 to focus on the whole document. I am just going</p> <p>15 to focus on the second page, item Roman numeral V,</p> <p>16 Medicare reform. And while you're looking at</p> <p>17 that, I will just identify it for the record.</p> <p>18 This is a June 5, '97, memorandum from David</p> <p>19 Landside to Jose DeLasa and several -- carbon</p> <p>20 copies to several individuals. And this is a</p> <p>21 document I believe we reviewed at your 30(b)(1)</p> <p>22 deposition.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. And Ms. Hanrahan, in discussing</p> <p>2 meetings with outside groups about proposed</p> <p>3 changes to Medicare's drug -- the way that</p> <p>4 Medicare reimburses for drugs in her June 1994</p> <p>5 memo about the Booth proposed survey, says that</p> <p>6 Abbott -- or not Abbott -- at least she and</p> <p>7 someone else, because she says "our" -- were</p> <p>8 concerned about Mr. Booth's proposed survey to</p> <p>9 determine acquisition costs for certain drugs</p> <p>10 reimbursed by Medicare Part B; isn't that correct?</p> <p>11 MS. TABACCHI: Object to the form.</p> <p>12 Beyond the scope of the notice.</p> <p>13 THE WITNESS: Yes, she does say that in</p> <p>14 her memo.</p> <p>15 BY MR. GOBENA:</p> <p>16 Q. And is it fair to say, Ms. Sensibaugh,</p> <p>17 that every time there was a proposed change to the</p> <p>18 way that Medicare reimbursed for drugs, whether</p> <p>19 it's the '91 proposed reg or this proposed survey</p> <p>20 by Mr. Booth or the proposed shift to an</p> <p>21 acquisition cost-based reimbursement system,</p> <p>22 Abbott opposed those changes?</p>	<p style="text-align: right;">Page 85</p> <p>1 We were discussing earlier whether or</p> <p>2 not Abbott had sort of an external official</p> <p>3 position on the President's proposal to shift from</p> <p>4 an average wholesale price position to an</p> <p>5 acquisition cost-based position. Do you recall</p> <p>6 that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. And you said that it was your</p> <p>9 understanding that Abbott did not have an external</p> <p>10 view on the issue, and you were not prepared to</p> <p>11 testify as to whether the company had an internal</p> <p>12 view on this shift in acquisition cost system;</p> <p>13 isn't that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. It -- there is an indication here in</p> <p>16 this memo from Mr. Landside that he was meeting</p> <p>17 with members of Congress about the proposed change</p> <p>18 from an average wholesale price to an acquisition</p> <p>19 cost-based Medicare drug reimbursement system. Do</p> <p>20 you see that there?</p> <p>21 A. I do see that bullet there.</p> <p>22 Q. And you reviewed Mr. Landside's</p>

22 (Pages 82 to 85)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Washington, DC

Page 138	Page 140
<p>1 memorandum itself which starts at ABT-DOJ 296491, 2 if you go to the -- if you review the memorandum, 3 it indicates that the pricing information in 4 attachment 1 is DOJ pricing information that 5 the -- CMS is asking the carriers to consider; 6 isn't that correct? 7 MS. TABACCHI: Object to the form. 8 Beyond the scope. 9 THE WITNESS: Yes, that's what it's 10 asking in the memo. 11 BY MR. GOBENA: 12 Q. So basically this memo asking the 13 carriers to consider these DOJ prices was asking 14 carriers to make reimbursement decisions that 15 could affect Abbott drugs; isn't that correct? 16 MS. TABACCHI: The same objections. 17 THE WITNESS: Yes, to the extent they 18 would have impact on Medicare reimbursement for 19 these drugs, yes. 20 BY MR. GOBENA: 21 Q. In addition to reviewing the program 22 memorandum -- the September 8, 2000, program</p>	<p>1 memorandum which supersedes the September 8, 2000, 2 program memorandum, and I will read parts of it 3 into the record here. It says, "This is to notify 4 you that you should not use the DOJ data attached 5 to program memorandum AB-00-86 in your next update 6 of Medicare payment allowances for drugs and 7 biologicals. Instead, until further notice, you 8 should delay the use of this new source of average 9 wholesale price, and use the AWP data from your 10 usual source." 11 It goes to say, "While we continue to 12 believe that the AWP's reported in the usual 13 commercially available sources are inaccurate and 14 inflated above the true wholesale prices charged 15 in the marketplace, congressional action may 16 preclude the use of this alternative source. To 17 avoid the disruption that would result from a 18 decrease in payment allowances followed by an 19 immediate increase due to final congressional 20 action, we are deferring the use of DOJ AWP data 21 until further notice." 22 Do you know whether or not Abbott had a</p>
Page 139	Page 141
<p>1 memorandum, did you review any other documents in 2 connection with the activities reflected in that 3 2000 program memorandum? 4 MS. TABACCHI: Object to the form. 5 Asked and answered. 6 THE WITNESS: I just reviewed parts of 7 Mrs. Haas' testimony. I think she talked about 8 this. 9 BY MR. GOBENA: 10 Q. Do you know whether or not the 11 September 8, 2000, program memorandum was 12 withdrawn at any point by CMS? 13 MS. TABACCHI: Object to the form. 14 Beyond the scope. 15 THE WITNESS: As I remember, it was 16 withdrawn in, I think, November of that year. 17 MR. GOBENA: We will have this marked 18 as Sensibaugh 30(b)(6) 14. 19 (Exhibit Sensibaugh 014 was marked 20 for identification.) 21 BY MR. GOBENA: 22 Q. And this is a November 17 program</p>	<p>1 position on whether the agency should or should 2 not have been using the DOJ data that was provided 3 in the September 8, 2000, program memorandum? 4 MS. TABACCHI: Object to the form. 5 Beyond the scope. 6 THE WITNESS: Yes, Abbott did not have 7 a position on the program memorandum. 8 MR. GOBENA: I am going to have this 9 marked as Sensibaugh Exhibit 15. 10 (Exhibit Sensibaugh 015 was marked 11 for identification.) 12 BY MR. GOBENA: 13 Q. While you're reviewing the document, I 14 will just identify it for the record. This is an 15 e-mail from Rosemary Haas to Dale Johnson dated 16 November 22, 2000. 17 Once you have had a chance to review 18 it, Ms. Sensibaugh, let me know. 19 A. Okay. I've reviewed it. 20 Q. Ms. Haas writes to Mr. Johnson, "Allow 21 me to clarify in response to your question, Dale. 22 The HCFA program memorandum is good news" -- and</p>

36 (Pages 138 to 141)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com